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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID RAY PYLE,

Defendant and Appellant.

C088068

(Super. Ct. No. CRF1800475)

This appeal comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 123-124.)

A felony complaint filed March 16, 2018, charged defendant David Ray Pyle with committing forcible rape. (Pen. Code, § 261, subd. (a)(2); count 1.)¹ An information was filed on June 6, 2018.

¹ Undesignated statutory references are to the Penal Code.

An amended information filed August 8, 2018, added a charge of sexual battery (§ 243.4, subd. (a); count 2). Defendant entered a plea of no contest to that count in return for the dismissal of count 1 with a *Harvey*² waiver and a sentencing range from two years to four years in state prison, plus the advisement that he would have to register for life as a sex offender.

The parties stipulated that the sheriff's report provided the factual basis for the plea. According to the prosecutor, the report indicated: "If witnesses were called, they would testify that on September 25th, 2017, in the county of Yuba, the [d]efendant restrained the victim . . . and touched an intimate part of her person against her will. [¶] . . . [T]he victim in this case is a client of the Alta California Regional Center. She had an acquaintance with the [d]efendant prior to this incident, and she had made arrangements to meet the [d]efendant to get some methamphetamine from him, which she did. The sexual assault took place subsequent to that."

At the sentencing hearing on September 24, 2018, the trial court dismissed count 1 and imposed the upper term sentence of four years in state prison on count 2, finding that it was justified by defendant's use of a knife in the commission of the offense, and by the victim's particular vulnerability due to her diminished mental capacity, of which defendant was aware. The court awarded 281 days of presentence custody credit (141 actual days and 140 conduct days).

The trial court imposed a \$1,200 restitution fine (§ 1202.4, subd. (b)) and a matching suspended parole revocation restitution fine (§ 1202.45). The court also imposed a total fine of \$1,200 (including a \$300 base fine under § 290.3 and penalty assessments, as itemized in the probation report and the abstract of judgment). The court ordered payment of \$180 to the Victim Compensation Board (§ 1202.4, subd. (f)) and

² *People v. Harvey* (1979) 25 Cal.3d 754.

reserved jurisdiction over the victim's possible future counseling costs. Lastly, the court imposed a \$40 court operations assessment (§ 1465.8) and a \$30 conviction assessment (Gov. Code, § 70373).

Defendant appeals. We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

s/BUTZ, Acting P. J.

We concur:

s/HOCH, J.

s/KRAUSE, J.